

Sumter City-County Planning Commission

June 22, 2011

OA-11-03, Exempt Subdivisions and Large Lot Access (County)

I. THE REQUEST

Applicant: Sumter City-County Planning Commission

Request: Request to amend relevant portions of Article 7, Article 8, and Article 10 related to subdivision access provisions, clarification of private easements for large lots, family transfer relationships, length to width ratios, and other subdivision regulations.

II. BACKGROUND

State Law and the Zoning Ordinance provide for a subdivision exemption for parcels over 5 acres when no new street is involved. This means primarily that there is no subdivision review or approval by Staff or the Planning Commission. Owners submit the lots for information only and may proceed to the courthouse to record the lots.

The notion of the “exemption” is ambiguous for both Staff and property owners. Yes, those parcels are exempt from subdivision requirements, but NOT exempt from zoning, use, floodplain, and other requirements, including access.

Access issues really are at the heart of the confusion. The ZO states a parcel is exempt if no new street is involved: yet it also requires “all streets to be public” and “all lots to be accessible” by a public street—or a private street PD, or a rural community drive. Thus no clear direction is provided for how and when private access easements are appropriate when not used in rural family situations. It is our position that an easement does not qualify as a “street,” but could if the ZO was revised properly.

There are also a few random regulations related to access and subdivisions which require some clarification in order to make the process more succinct to the public and perhaps more customer friendly.

In conjunction with the County Attorney, Staff recommends a review and revisions to the relevant section in order to clarify these inconsistencies:

1. **Length to width ratio.** Section 8.e.13.f. sets forth a half-hearted attempt at limiting length to width ratios. Recall, the County restricts length to width ratio to prohibit or discourage pipe stem or flag shaped lots. By and large our current lot width minimums help ensure this does not occur. Moreover, the current regulation is not so much a regulation as a guideline—it uses the phrase “as a general rule”—and therefore inappropriate for a zoning ordinance. The current regulation is 1 to 2.5; that is, no lot can have a length more than 2.5 times its width. This is too restrictive in our opinion. We recommend the following new language:

f. The length to width ratio for residential lots shall be 1 to 4.5. Parcels of 5 acres or more are exempt from any length to width requirement.

2. **Access to agricultural lands and timber parcels.** There is no specific guidance in the zoning ordinance providing for legal access to land locked agricultural or timber parcels. We propose a simple change which permits these parcels of 10 acres or more be served by a 15' private access easement and driveway, shown on a plat or described in a deed, so long as no primary residential or commercial uses exists on the property. The Zoning Ordinance Review committee suggested that at a minimum a written statement of approval from the property owner(s) could be provided in lieu of a bone fide easement. We recommend adding a section g. to 8.e.13:

g. Agricultural and Timber parcels of 10 acres or more which do not have frontage on a public street may be served via a minimum 15' private access easement. No primary residential or commercial use is permitted on the property. In the alternative access may traverse adjacent properties with the written approval of all property owners.

3. **Expand Lifetime Family Transfer Relationships.** Current regulation allows the use of a lifetime family transfer (effectively allowing access via a private easement and no public street) between a parent and child or grandparent and child. The nature of family enclaves in Sumter suggests the need to expand this. Over the past several years the Planning Commission has approved variances for transfers between siblings and spouses, in addition to the traditional parent-child transfer. We see no harm in this expanded practice and recommend amending how we define these relationships in this manner:

Lifetime Family Transfer: *A lifetime transfer or conveyance of property from parent to child and/or spouse of any such donee child, lifetime transfer from grandparent to grandchild and/or spouse of such donee child, and from sibling to sibling and/or spouse of such donee sibling (any other family relationships requesting to use this provision, i.e. cousin to cousin, must be reviewed and approved by the Planning Commission).*

4. **Exempt Subdivisions.** South Carolina State Law exempts certain subdivision of property from local review (meaning property owner can draw up a plat and record it at the courthouse without City or County Planning approval). Many think that this exemption implies that the parcel is exempt from access, use, floodplain, or other zoning regulations. This is not the case. As such we propose to add language in order to clarify

the meaning. In addition, we propose removing the lifetime family transfer from exempt status owing to the fact that the corresponding conditions require a good level of County review:

Subdivision Exempt Subdivision, Exempt: *An exempt subdivision is exempt from Planning Commission or Planning Staff review is one which meets the following conditions:*

- 1. Combining or recombining portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the Ordinance Standards.*
 - 2. Dividing land into parcels of five (5) acres or more where no new street is involved. The Planning Commission must receive plats of these exceptions as information and indicate that fact on the plats. For the purposes of this definition, a 5 acre parcel is exempt if it has legal direct access and frontage on a public street. A 5-acre lot served by private street or private access easement is not considered exempt and must follow normal subdivision procedures as set forth in Article 7 and Article 8. A public street is one which has been formally accepted by the City, County or the State of South Carolina.*
 - 3. Combining or recombining entire lots of record where no new streets or change in existing streets is involved.*
 - 4. A subdivision involving cemetery lots*
 - 5. The subdivision of property pursuant to specific directions for the divisions of the property set out in a will executed prior to the effective date of the Subdivision Ordinance adopted as Ordinance 1287 on December 1, 1991 in the City of Sumter, and November 12, 1999 in the County of Sumter.*
5. **Private Access for Large Lot Residential.** Today the County permits private access easement only for lifetime family transfers. If the property is sold outside of the lifetime family transfer within 5 years, it must be upgraded meeting all of County road criteria (essentially: engineered, paved, stormwater etc...). After 5 years the lifetime family transfer may be sold outside of the family with and the private access easement (rural community drive) may remain in place.

Yet, the development community has expressed some interest in permitting, what we have called rural community drives (I have used the term interchangeably with private access easements), for large lot residential properties. So we have discussed the possibilities of allowing private drives to serve large market rate lots of 5 acres or more.

This would be an extraordinary step for the County who has strictly allowed private drives only to accommodate family transfer subdivision.

From a Planning perspective Staff has no particular objection to this approach. Private access easements are used across the country, serving large rural lots. We would

recommend clear guidelines identical to the current rural community drive. We recommend a limitation on the number of lots served—five (5)—and a minimum lots size for market rate development—perhaps five (5) or ten (10) acres in size. We recommend the restrictive covenants accompany the subdivision application and that it be reviewed by the County Attorney. The size recommendation is based in the fact the higher the land costs, the more likely the quality of the development and the surety of the private access agreement.

The Zoning Ordinance Committee of the Planning Commission recommended that design standards be developed for these types of residential developments.

It must be noted for the record that the County Council has long been concerned over the prospect of permitting private drives, only to be pressured later by constituents for public acceptance. This is a legitimate concern echoed by the County Director of Public Works.

Section 8.e.1.c.2 of the Zoning Ordinance would be amended in relevant part:

2. *Rural Community Driveways (RCD) shall be allowed **only** in the unincorporated areas of Sumter County when serving **no more than five** lots.*
 - a. *The Rural Community Driveway (private access easement) may serve subdivisions related to lifetime family transfers as defined in Article 10 and market rate subdivisions;*
 - b. *The easement shall be clearly shown on the subdivision plat;*
 - c. *That such lots shall be not less than five (5) acre in size and be no less than 125 feet wide at the building line for market rate lots; Such lots shall not be less than one (1) acre and be no less than 125 feet wide for lifetime family transfers;*
 - d. *That the driveway shall be privately maintained and owned by all property owners, and shall be accessible to each lot so created, and to a public street;*
 - e. *That access, ownership and maintenance of the community driveway be the sole responsibility of the affected property owners, and so stated in restrictive covenants accompanying the sale and/or transfer of each lot, and so noted in the capital letters on the deed of record, as follows: “The driveway providing access to lots in this subdivision is privately owned and is not maintained by Sumter County nor the City of Sumter, nor is it likely to be maintained in the future. Owners of lots in this subdivision are financially obligated to maintain this driveway for the benefit of all property owners in the Subdivision.”*
 - f. *The restrictive covenants shall refer to the plat required for recording;*

- g. *That further subdivision of lots shown on the plat shall be prohibited by the restrictive covenants, except the provisions of this Section shall not prohibit adjustments in lot lines which do not reduce the size of any affected lot to less than one (1) acre, and where no additional lot is created.*
- h. *That the restrictive covenants shall provide that they not be amended or modified except by written consent of the Sumter City-County Planning Commission (or any other successor organization) and all property owners in the subdivision;*
- i. *That the restrictive covenants shall require that any deed conveying an interest in any lot in the subdivision shall conspicuously contain the following language with an appropriate space for a signature by the grantee or grantees acknowledging same. **“The real property described in this deed is subject to restrictive covenants recorded in Deed Book _____ at page _____. These restrictive covenants provide, among other things, a financial commitment to maintain a community driveway. These restrictive covenants are specifically acknowledged by the grantee(s).”***
- j. *That the plat required for recording be prepared in accordance with the plat approval requirements for minor subdivisions;*
- k. *That the driveway easement shall not be less than fifty (50 ft.) feet wide and the lot shall meet minimum width requirements for the district. Roadbeds shall have an all-weather surface of crusher-run or equivalent of not less than fifteen feet (15 ft.) in width and a 50 foot radius cul-de-sac at the end of the right-of-way for emergency vehicle turnaround.*
- l. *That the owner shall conspicuously place and maintain on the privately maintained rural community driveway all traffic control signs and a street name sign showing the RCD as a private driveway.*
- m. *That the uses for property on an RCD shall be residential (as allowed by zoning district) and Home Occupations only.*
- n. *That the driveway shall be maintained by all adjacent property owners. If Sumter County incurs any costs to maintain the road, those costs shall be a lien on all lots on the RCD and that those costs will be allocated equally among the lots and added to the ad valorem taxes on those lots.*
- o. *If any lot on a RCD is voluntarily transferred as limited by subsection a. above outside the family within the 5 years following the final inspection of the dwelling on the final lot, the RCD shall be upgraded*

to a road that meets all Sumter County standards to be accepted into the County Road System. After 5 years, the RCD may remain as is for property transfer.

- p. If a lot is transferred as described above, it must be approved as a minor subdivision with review by the City-County Planning department.*

III. ZONING ORDINANCE SUBCOMMITTEE

On June 17, 2011, the Committee reviewed the alternatives presented by Staff. By and large the committee found consensus in the topic, after proving additional recommendations to Staff. They directed that the amendments be forwarded to the entire Commission for discussion.

IV. PLANNING COMMISSION – JUNE 22, 2011

The Sumter City-County Planning Commission at its meeting on Wednesday, June 22, 2011, voted to recommend approval of this request as presented by staff.

V. COUNTY COUNCIL –